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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1948
No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, and FARMER BROS. Co., a corporation, the Real Parties in Interest,
Petitioners,

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,
Respondents.

MOTION TO DISMISS WRIT OF CERTIORARI.

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The Byers Legal Press, Los Angeles. Phone VAndike 9007.

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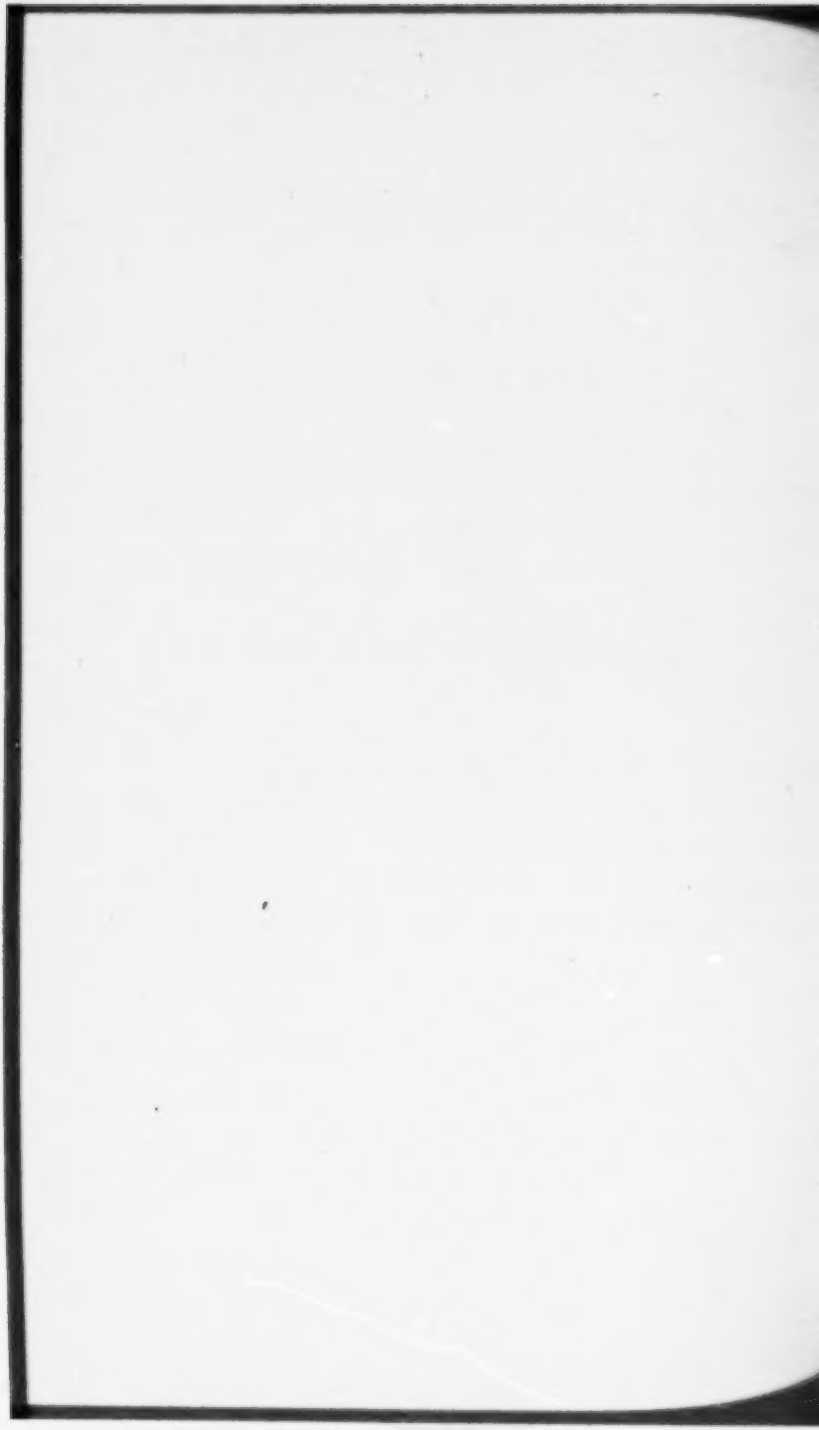

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To the Honorable Fred Vinson, Chief Justice of the Supreme Court of the United States and to the Honorable Associate Justices:

The respondents, Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen, now move this Honorable Supreme Court of the United States to dismiss the Petition for Writ of Certiorari herein on the following grounds:

1. The case is now moot for the reason that prior to the filing of the petition for the Writ of Certiorari in

this Court, the real party in interest, Farmer Bros. Co., a corporation, dismissed its action in the Superior Court of the State of California in and for the County of Los Angeles, with prejudice.

2. That the petition for the Writ of Certiorari herein does not present a Federal question in that no Federal question is presented when the highest Court of a State holds that a party is not guilty of contempt.

Argument.

The record filed with this Court on the petition for the Writ of Certiorari did not contain the Dismissal with Prejudice filed by the real party in interest, Farmer Bros. Co., a corporation, in the Court below.

This omission has now been corrected by a stipulation between the parties, filed with the Clerk of this Honorable Supreme Court of the United States, which stipulation has attached to it a certified copy of the Dismissal and to which document reference is hereby made for further particulars.

The Dismissal with Prejudice last above referred to, was entered of record by the Clerk of the Superior Court of the State of California in and for the County of Los Angeles, on October 15, 1947, which was prior to the application by the petitioners for a rehearing in the Supreme Court of California.

The Dismissal by Farmer Bros. Co. now makes this proceeding moot in view of the fact that the petition for the Writ of Certiorari is grounded upon the contention

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that the petitioners in interest were deprived of the equal protection of the laws and due process of law in violation of the 14th Amendment. Since the petitioners in interest have dismissed their case with prejudice and can no longer assert any rights thereunder, the action is now moot.

It is fundamental that when an action has been dismissed with prejudice, the party so dismissing has no further standing in Court and cannot seek redress in any manner. It is equally fundamental that the party in whose favor the action has been dismissed would be denied the equal protection of the law if, after a dismissal, the party dismissing was heard to take further steps in pursuance of a dismissed action.

The Supreme Court of California discharged the respondents without remanding them to the Court below. This operated as a final determination and an acquittal of the respondents.

Since the highest Court of California held that the respondents were not guilty of contempt, no Federal question is presented.

Authorities.

In *Newport Light Co. v. Newport*, 151 U. S. 527, Mr. Justice Jackson, speaking for the court, said:

> "This court has never gone to the extent of holding that such an order, as is here sought to be reviewed, was either a final judgment of the highest court of a State, or presented a Federal question, such as would entitle a party to have the judgment reexamined here. The case presented both in the lower court and the appellate court of Kentucky was simply whether the acts of the defendants in error could be properly considered in violation of the injunction granted in the original cause. . . .
>
> ". . . If the proceeding below, being for contempt, was independent of and separate from the original suit, it cannot be reexamined here either by writ of error or appeal. This was decided more than fifty years ago in *Ex parte Kearney*, 7 Wheat. 38 and the rule then established was followed as late as *New Orleans v. Steamship Company*, 20 Wall. 387. The court held that it had no jurisdiction, and dismissed the writ of error.
>
> "No decision of this court has gone so far as to hold that the construction which the highest court of a State places upon its own judgment, and under which construction it holds that a party thereto has not been guilty of contempt, presents a Federal question, such as would confer jurisdiction upon this court to reexamine or reverse such a judgment.
>
> ". . . This court is not called upon to review the correctness or incorrectness of this reasoning on which the Court of Appeals reached its conclusion that the order of the lower court was erroneous. The judgment of the Court of Appeals, whatever

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may have been the reasons assigned therefor, merely reversed the action of the lower court, declaring that the defendants in error were in contempt, and directed that court to discharge the rule against them.

"For the foregoing reasons we think no Federal question is presented by the writ of error, and it is hereby dismissed."

See also:

In re Hampton, 98 Cal. App. 480;

Ex parte Mefferd, 110 Cal. App. 1.

As authority for the proposition that the case is now moot, see *Kimball v. Kimball,* 174 U. S. 158; and *Tregea v. Modesto Irrigation Dist.,* 164 U. S. 179.

Upon the foregoing the respondents, therefore, move this Honorable Court to dismiss the Petition for Writ of Certiorari.

Respectfully submitted,

DAVID SOKOL,

Attorney for Respondents L. L. Sylvane, Homer Ford and Irv Magisen;

V. P. LUCAS,

Attorney for Respondents Gay Lillefloren and Russell Marks.